IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1366 OF 2007

1. Shri Shivaji Maruti Shingate,
   aged about 41 years, residing at Mangnoor @
   Savatwadi, Taluka Gadhinglaj,
   District Kolhapur.

2. Shri Ananda Parsu Sawant, aged about 55,
   years, residing at Mangnoor @ Savantwadi,
   Taluka Gadhinglaj, District Kolhapur/

3. Shri Shivaji Bhimrao Surat, aged 55 years,
   residing at Mangnoor @ Savatwadi, Taluka
   Gadhinglaj, District Kolhapur.

4. Sou. Indubai Jotiba Naik, aged about 30
   years, residing at Mangnoor @ Savatwadi
   Taluka Gadhinglaj, District Kolhapur ..Petitioners

v/s.

1. The State of Maharashtra

2. The Block Development Officer, Panchat
   Samiti Gadhinglaj, District Kolhapur

3. The Chief Executive Officer,
   Zillha Parishad Kolhapur, District Kolhapur

4. The Collector, Kolhapur, District Kolhapur

5. Divisional Commissioner, Pune, Divisional
   Pune, District Pune.

6. Shri Prakash Maruti Patil, aged 30 years,
   residing at Mangnoor @ Savatwadi, Taluka
   Gadhinglaj, District Kolhapur

7. Sou. Vimal Vijay Desai, aged about 30
   years, residing at Mangnoor @ Savatwadi,
   Taluka Gadhinglaj, District Kolhapur.

8. Shri Arjun Dadu Patil, aged about 35 years,
residing at Mangnoor @ Savatwadi,
Taluka Gadhinglaj, District Kolhapur .. Respondents

Mr. G.N. Salunke for the petitioners.
Mr. P.P. Kakade, Assistant Government Pleader for the respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.

DATED : 28TH MARCH, 2007

ORAL JUDGMENT (Per F.I. Rebello, J.)

Rule. Heard forthwith.

2. The petitioner Nos.1 to 4 were the elected members of the Gram Panchayat known as Mangnoor @ Sawatwadi Gram Panchayat. They have resigned their membership. Respondent Nos.6 to 8 are the existing members. Elections to the Gram Panchayat were held in May, 2005. The strength of the Gram Panchayat consists of 7 members. The petitioner No.4 was elected as Sarpanch and respondent No.6 as Deputy Sarpanch. There were some dispute about the election of respondent No.6 as Sarpanch. On account of this dispute, respondent Nos.2 and 3 visited the village on 4.8.2006 and declared respondent No.6 elected as Deputy Sarpanch. The said declaration was made without calling the petitioners for the meeting and taking their opinion or votes of the petitioners and behind their back, thereby cancelling the earlier election of Sarpanch and Deputy Sarpanch. The petitioners, in the circumstances, as set out above, tendered their resignation.

3. It is the case of the petitioners that total strength of the

Panchayat consists of 7 members, out of which four members have resigned and consequently, as more than half the total number of seats have been vacant then Panchayat ought to have been dissolved. Instead, by order dated 21.11.2006, there is a direction issued to hold elections to the four vacant seats. It is submitted that there is no power to fill in the vacant seats. It is submitted that, considering section 145 (1-A) of the Bombay Village Panchayat Acts, 1958, hereinafter referred to as the Act, the order is illegal and consequently, liable to be quashed and set aside.

4. We may first note the provisions of section 145(1-A) which reads as under:-

> "[(1-A) If more than half the total number of seats in a Panchayat have become vacant, the State Government may, by order in the Official Gazette, dissolve such panchayat.]"

It is, therefore, clear that the power to dissolve is not mandatory but directory. The petitioners must, therefore, make out a case that the non-exercise of this power or discretion by the respondent-State is arbitrary and illegal.

5. We may consider some provisions of the Act to answer the issue as to whether there is no power in the Act to fill in the vacancy occasioned by resignation of a member/members. Section 10 provides for constitution of Panchayat. The number of members is as provided therein. The minimum number has to be 7 and maximum not more than 17.

We may reproduce sections 11(2) (3) and (4) for the sake of discussion which reads as under:-

> (1).....
>
> (2) The election of members of panchayat or election to fill any vacancy shall be held on such date as the State Election Commission may appoint in this behalf.
>
> (3) Notwithstanding anything contained in Section 10, if the vacancy of a member occurs within six months preceding the date on which the term of office of the members of the panchayat expires under Section 27, the vacancy shall not be filled.
>
> (4) Such election shall be conducted in the prescribed manner].

A perusal of this section would make it clear that election of members of Panchayat or election to fill any vacancy shall be as the State Election Commission may direct.

Section 13-A provides that if a person is elected to more than one seat in a village panchayat, then unless, within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the State Election Commission or any officer authorised by it, all the seats shall become vacant. Section 14 is the provision for disqualifications. Section 14-A provides for disqualification arising out of certain convictions and corrupt practices under the Act. Election petition as to whether a candidate was duly elected is provided by section 15.

6. From the above, it would be clear that during the term of office of the Panchayat, vacancies can arise in situations as set out earlier. Section 27 sets out that the members of a panchayat shall, save as otherwise provided in the Act, hold office for a term of five years. Section 29 provides for resignation and if there be a

dispute, the manner in which it has to be resolved. We have already noted that section 145(1-A) provides for a situation where a Panchayat could be dissolved. From a reading of these provisions, can it be said that there is no provision to fill in the vacancy occasioned under various circumstances set out earlier. If the argument of the petitioners would be accepted, no vacancy arising either on account of disqualification and/or resignation can be filled in and the body would have to function with less number of members then what it is constituted. In our opinion, it would be impossible to envisage the situation whereby vacancies cannot be filled in. Parliament by an amendment to the constitution has provided for the manner in which the Panchayat should be constituted, their term of office and the like in Articles 243 and 243-O of the Constitution. Article 243-C provides for composition of Panchayat. We have earlier referred and reproduced section 11 (2). The language clearly used is election of members of a panchayat or election to fill any vacancy. In other words, the vacancy in the term of office can also be filled in. The vacancy has to be filled in on the date to be specified by the State Election Commission and has to be conducted in the prescribed manner. We have, therefore, no doubt whatsoever that even in respect of a vacancy occassioned during the term of the Panchayat, that vacancy can be filled in by holding election for that seat. This provision would clearly indicate that it is an independent power of Election Commissioner unconnected with section 43.

Section 43 if read in its proper perspective has to be only in respect of Sarpanch and Upa-Sarpanch. The learned counsel had sought to draw the attention to section 44 to point out that during any vacancy in the Panchayat, the continuing members may act as if no vacancy had occurred. This was pointed out to indicate that

even if the Panchayat consists of less number of members, its functioning is not effective. The very section itself would also clearly indicate that the expression “During any vacancy in the Panchayat” would mean a vacancy existing. It does not mean that such vacancy should not be filled in. On the contrary, read with section 11(2) it would clearly indicate that the vacancies have to be filled in so that the Panchayat is constituted and functions with members as required in terms of section 10 of the Act. We have, therefore, no hesitation in rejecting the contention as urged by the petitioners.

7. The next argument was advanced considering that as four out of seven members had resigned, the State Government, in exercise of its power under section 145(1-A) ought to have dissolved the Panchayat and directed holding of fresh elections and ought not to have issued directions to fill in the vacancies. The language of the section itself makes it clear that this is in the discretion of the Government. The discretion, in the first instance, must be exercised so as to make the Panchayat workable and functionable. The term is for the period of five years normally, therefore, an elected Panchayat should be allowed to complete its term. The provision of the Act itself would indicate that if there be a dissolution and fresh elections, the newly elected members can continue in office for the remaining term for which the elections were held. If the petitioners' argument is to be accepted then by the act of resignation for whatever reasons, the State Government would have to exercise its power of dissolution. This does not further either the democratic process or the constitutional mandate whereby the objective is to allow a large amount of freedom to the Panchayat in the process of development at the local level. Stability and certainty in our elected bodies is desirable. The State

Government is not bound to dissolve the Panchayat unless a situation has arisen where the functions of the Panchayat cannot be carried out except by dissolution and holding fresh elections. In the instant case, discretion has been exercised not to dissolve but instead to hold elections. This cannot be said to be arbitrary or an unreasonable exercise of power. In our opinion, therefore, the second contention has also to be rejected.

For the aforesaid reasons, we find no merit in this petition and it is dismissed. Rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)